IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4839 OF 2003

Krishnakant Sakharam Ghag, a Partner of M/s.Amit Textile Processors having its office at L.B.S. Marg, Vikhroli, Mumbai - 400 079. ..Petitioner.

V/s.

1. Union of India through the Secretary, Ministry of Finance Department of Revenue North Block, New Delhi - 110 001.

2. Dy.Commissioner (Preventive), Tax Recovery Cell, Mumbai-II 7th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 0012.

3. Asstt. Commissioner of Central Excise, Vikhroli Division, Polyshoor Building, 1st Floor, L.B.S. Marg, Vikhroli (West), Mumbai - 400 083. ..Respondents.

Mr.S.Sridharan, Advocate with Mr.Prakash Shah, Mr. Gajendra Jain and Mr.J.H. Motwani i/b. PDS Legal for petitioner.

Mr.R.V.Desai, senior Advocate with Mr.P.S.Jetly and Mr. Y.R.Mishra for respondents.

CORAM : DR.S.RADHAKRISHNNAN & J.P.DEVADHAR, JJ.

DATED : 3RD MARCH, 2006.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. By this petition, the petitioner seeks a declaration to the effect that the Notification No.48/97-CE dated 2/9/97 amending Notification No.68/63-CE dated 4/5/63 is ultra vires Section 12 of the Central

Excise Act, 1944, that the order in original dated 24/12/1991 to the extent it demands interest on delayed payment of duty is illegal and contrary to law and a declaration that even if interest is recoverable pursuant to an order passed by the Delhi High Court, the revenue cannot seek to recover such interest by initiating recovery procedure prescribed under the Act. Accordingly, the petitioner seeks an order for lifting the attachment levied on the property belonging to the petitioner.

2. The basic contention of the petitioner is that, section 12 of the Excise Act does not empower the Central Government to import the recovery provisions contained in the Customs Act, 1962 and, therefore, Notification No.48/97 issued by the Central Government empowering the excise authorities to invoke the recovery provisions contained in sub-clause (ii) of clause (c) of sub-section (1) of Section 142 of the Customs Act, 1962 in respect of the duties imposed by section 3 is ultra vires section 12 of the Excise Act. It is further contended that at the material time there was no provision under the Excise Act to demand interest on the delayed payment of duty and, therefore, the impugned order in original dated 24/12/91 in so far as it purports to demand interest on delayed payment of duty is illegal and contrary to law. Alternatively, it

is contended that assuming the revenue is entitled to recover interest pursuant to an order passed by the Delhi High Court then, such interest levied by the Court has to be recovered as a decree of a Civil Court and not by resorting to the recovery provisions contained in the Excise Act or the Customs Act applied to Excise Act. In other words, the submission is that, where any amount is due to the Government pursuant to an order of the Court and not under the Excise Act or Customs Act, then, that amount ordered by the Court has to be recovered as a decree of a Civil Court in the manner provided in the Code of Civil Procedure and the revenue cannot resort to the machinery prescribed under the Act to recover such amount.

3. The relevant facts are that at the material time the petitioner was a partner in a partnership firm known as M/s.Amit Textile Processors (‘the firm’ for short). The said firm was engaged in the processing of man-made fabrics at its factory at Vikhroli, Bombay.

4. The said firm had filed a Writ Petition bearing No.2523 of 199O in the Delhi High Court to challenge the levy of additional duty of excise on the activity of processing the man-made fabrics. Similar petitions were filed by several other processors of man-made fabrics in the High Court at Delhi. All those

petitions were admitted by the Delhi High Court and interim reliefs were granted restraining the respondents from recovering the additional duty of excise on the processing of man-made fabrics.

5. Thereafter, all those Writ Petitions were heard together and by a common Judgment and order dated 9/7/1991 the Delhi High Court dismissed all those Writ Petitions. In the said Judgment dated 9/7/91, the lead matter being in the case of **Parekh Prints & Ors. V/s. Union of India (62 E.L.T. 253)**, the Delhi High Court while dismissing the petitions with costs and directing the revenue to recover duty with interest at 17.5% inter alia observed in para 42 as follows:-

> "42. We find that for the petitioners perhaps litigation is business. After getting interim orders they find they are nothing to lose except in the shape of fees payable to counsel. They have collected additional duties of excise from the ultimate consumers but have not repaid the same to the credit of the Central Government and they thus utilised half of the duty so collected for their own purposes. The interim orders which the petitioners have obtained have adversely affected the States who are not parties to these petitions and were entitled to the share of the revenue levied and collected under the Act but would certainly have been deprived of the same all this period because of the stay. Petitioners cannot be permitted to make profit at the cost of public revenue. The petitioners must restore the advantage they had over the respondents because of the stay they enjoyed and consequently deprived the respondents of their lawful revenues during the period stay operated against them. During the course of hearing of these petitions we were informed by the learned Additional General that a sum of Rs.700/- crores has become due from the petitioners towards the additional duties of excise

because of the stay. The amount is really staggering. Because of the view we have taken the petitioners were not entitled to withhold this amount after having collected duties of excise and then utilise the same for their own business purposes. We are told that the bank rate of interest is 17% per annum on commercial transactions as it was and we are of the opinion that not only that the respondents should be allowed to encash the bank guarantees forthwith, they should also be entitled to interest on these amounts at the rate of 17.1/2% per annum from the date the duty became payable but was stayed under the orders of this Court. Though when the interim orders were made there was no direction of payment of interest but we find that under writ jurisdiction we have no such powers to bring the parties to the same level once the petitions are dismissed and interim orders vacated. Petitioners must restore the advantage they got to the detriment of the public revenue and to which the advantage they were not entitled as we have held the petitions to be without any merit. Even otherwise we have power to award costs calculated in terms of interest at the rate and on the amounts and for the period above mentioned. We order accordingly. We find no merit in these writ petitions and would dismiss the same with costs as above mentioned. We separately assess counsel fee at the rate of Rs.2,000/- in each of these writ petitions. Rule is discharged."

6. Since the Writ Petition No.2523 of 1990 filed by the firm was inadvertently left out from the group of petitions disposed off on 9/7/91, the Delhi High Court by its order dated 22/1/1992 dismissed the above Writ Petition filed by the firm by holding that the matter is squarely covered by its decision in the case of Parekh Prints & Ors. (supra) delivered on 9/7/1991.

7. Meanwhile, in the light of the Judgment of the Delhi High Court dated 9/7/91, the Assistant

Collector of Central Excise, Bombay finalised the assessment in the case of the firm by passing an order in original dated 24/12/1991. By the said order, the Assistant Collector confirmed the demand of duty at Rs.20,40,080.90 and after giving credit for the amount of Rs.1,04.080.95 already paid, held that the firm was liable to pay the balance duty amount of Rs.19,09,999.95 with interest at the rate of 17.5% from the date on which the duty was liable to be paid till the duty was actually paid.

8. It may be noted that the decision of the Delhi High Court dated 9/7/91 has been upheld by the Apex Court. Even the order in original dated 24/12/1991 passed against the firm confirming duty with interest at the rate of 17.5% has attained finality as no appeal has been filed against the said order.

9. During the period from 1992-2001 the revenue could recover the duty but not the interest which was confirmed by the order dated 24/12/1991. Therefore, by a letter dated 22/2/01 the respondents called upon the petitioner as a partner of the firm to pay within seven days interest as per the order dated 24/12/91, failing which the same would be recovered from the petitioner by adopting the procedure prescribed under section 142 (1) (c)(ii) of the Customs Act read with Rule 4 of the

Customs Attachment of Property of Defaulters for Recovery of Customs Dues Rules, 1995 (‘1995 Rules’ for short) as made applicable to the Central Excise matters by Notification No.68/63-CE dated 4/5/1963 as amended by Notification No.48/97-CE dated 2/9/97.

10. As the petitioner failed to pay the interest amount, on 9/3/01 the Excise Authorities attached the immovable properties belonging to the petitioner. Thereafter by a letter dated 31/7/01 the respondents quantified the interest payable at Rs.25,85,109.18 ps. and called upon the petitioner to pay the same immediately. Thereupon, the petitioner filed the present petition to challenge the validity of the Notification No.48/97-CE dated 2/9/97, as well as the action initiated by the respondents for recovering the interest.

11. To complete the narration of facts, it may be noted that on 2/9/03 this Court while admitting the petition directed that if the petitioner deposits in Court the entire amount of interest within 4 weeks, the attachment levied on the petitioner’s property shall stand lifted and if the petitioner fails to deposit the amount as directed, then the petition shall stand automatically dismissed without reference to the Court. The petitioner challenged the said order by filing a

Special Leave Petition before the Apex Court. However, the Apex Court declined to interfere with the order passed by this Court. Thereupon, the petitioner deposited the entire interest amount of Rs.25,85,109.18 in this Court and the Revenue has been permitted to withdraw the said amount.

12. The principle argument of Mr.Sridharan, learned counsel for the petitioner is that under the Excise Act, the word ‘levy’ and ‘collection’ have different connotations. Referring to section 3 of the Excise Act, he submitted that under the Excise law the word "levy" does not include "recovery" or "collection" and accordingly the word "levy" used in section 12 of the Excise Act would not include "collection". The submission is that the word ‘levy’ in Section 12 of the Excise Act is restricted to the charge and does not include "recovery / collection" and, therefore, the Notification No.48/97 dated 2/9/97 issued by the Central Government empowering the excise authorities to apply the recovery / collection provisions of the Customs Act in respect of the duties imposed under section 3 of the Excise Act, is ultra vires section 12.

13. Mr.Sridharan submits that under section 12 of the Excise Act the Central Government can apply the provisions of the Customs Act only in relation to levy,

exemption, drawback, warehouse, offences, penalty and confiscation procedure for offences and appeals. He submits that the categories enumerated in section 12 of the Excise Act are not illustrative but are exhaustive in nature and, therefore, the Central Government cannot import the provisions of the Customs Act in excess of those specifically set out therein. As the words "recovery / collection" do not find place in section 12 of the Excise Act, the Central Government cannot apply the recovery provisions contained in the Customs Act in respect of the duties imposed under section 3 of the Excise Act. He submits that the expression ‘in regard to like matters’ used in section 12 further supports his contention that the power conferred upon the Central Government to borrow the provisions of the Customs Act is restricted to only those categories which are specifically set out in the section. He submits that if it is held that the power of the Central Government under section 12 is not restricted to the categories enumerated therein but it extends to other categories also, then, it would render the categories specifically enumerated in the section redundant or otiose. Such a construction which renders the express words used in the section nugatory / redundant or otiose must be avoided.

14. Mr.Sridharan further submitted that wherever

the Parliament intended to apply all the provisions of the Act and specified some of the categories as and by way of illustration, then the legislature has used the word "including". In this connection, counsel for the petitioner referred to section 3(3) of the Additional Duties of Excise (Goods of Specified Importance) Act, 1957 and section 3(3) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. In those enactments, it is provided that the provisions of the Central Excise & Salt Act, 1944 and the Rules made thereunder, including those relating to refunds and exemptions from duty shall, so far as may be, applied in relation to the levy and collection of the additional duties of excise. By using the word ‘including’ in those enactments, the legislature has made it amply clear that the categories enumerated therein are only by way of illustration. However, in section 12 of the Excise Act neither the word "collection / recovery" nor the word ‘including’ are used. Therefore, the categories specified in section 12 of the Excise Act cannot be said to be illustrative and in the absence of specific empowerment, the Central Government could not import the provisions of the Customs Act relating to recovery / collection in respect of the duties imposed under section 3 of the Excise Act. He submitted that if the contention of the revenue is accepted it would mean rewriting the section

which is not permissible in law.

15. Relying upon the decisions of the Apex Court in the case of **N.B.Sanjana V/s. Elphinstone Spinning & Weaving Mills Co. Ltd.** reported in **1971 (1) SCC 337, the Assistant Collector of Central Excise, Calcutta Vs. National Tobacco Co. of India Ltd**., reported in **(1972) 2 SCC 560** and the decision in the case of **Somaiya Organics V/s. State of U.P.** reported in **2001 (5) SCC 519 at 533**, Mr.Sridharan submitted that it is now well settled in the context of the Excise Act that the term 'levy' does not include 'collection' within its scope. Therefore, the word 'levy' used in section 12 of the Excise Act does not include 'collection'. Accordingly, Mr.Sridharan submitted that Notification No.48/97 issued by the Central Government is in excess of the powers vested in the Central Government under section 12 of the Excise Act and hence the said Notification is liable to be quashed and set aside.

16. Mr.Sridharan further submitted that the order in original dated 24/12/91 to the extent it demands interest on delayed payment of duty is illegal because, at the relevant time there was no provision under the Excise Act to demand interest on delayed payment of duty. He submitted that the liability to pay interest on delayed payment of duty was introduced

in the Excise Act for the first time in the year 1996 by enacting section 11AB. Therefore, in the order in original passed on 24/12/1991, which is prior to the introduction of section 11AB, interest could not be demanded on the delayed payment of duty. Since the demand for interest contained in the order in original dated 24/12/1991 was not authorised under the Excise Act, the said order as well as the follow-up actions taken to recover the amount of interest are liable to be declared as illegal and contrary to law.

17. Mr.Sridharan further submitted that the adjudicating authority was in error in holding that the interest was payable pursuant to the Delhi High Court decision dated 9/7/91, as the said decision was not rendered in the Writ Petition filed by the firm in which the petitioner was a partner. The Writ Petition filed by the firm was dismissed by the Delhi High Court on 22/1/92, wherein the court has referred to the order dated 9/7/91, but refrained from directing the firm to pay duty with interest. Therefore, in the absence of any specific order for payment of interest passed by the Delhi High Court in the Writ Petition filed by the firm, the Assistant Collector of Central Excise could not have demanded interest.

18. Alternatively, Mr.Sridharan submitted that,

assuming the revenue was entitled to recover interest on delayed payment of duty based on the order passed by the Delhi High Court on 9/7/91, even then, to recover such interest the proper course was to adopt the recovery proceedings contained in the Code of Civil Procedure and it was not open to the respondents to initiate proceedings under the Act and the rules made thereunder. The submission is that the recovery procedure prescribed under the Act and the Rules made thereunder are applicable to the recovery of the amounts due under the Act. Since the interest sought to be recovered was not authorised under the Excise Act, the respondents could not have initiated the recovery proceedings prescribed under the Act or the Rules made thereunder.

19. In this connection, Mr.Sridharan referred to sub-rule (ii) and (vi) of Rule 2 of the 1995 Rules which read as under :-

> "2(ii) 'Government dues' means any duty or drawback to be recovered from any person or any interest or penalty payable by any person under the Act and has not been paid."
>
> "2(vi) 'defaulter' means any a person from whom Government dues are recoverable under the Act."

In the light of the aforesaid provisions, Mr.Sridharan submitted that the 1995 Rules could be

pressed into service only in respect of the government dues recoverable under the Excise Act. In the present case, admittedly the interest demand is not based on the provisions of the Excise Act but based on the order of the Court and therefore, to recover the interest ordered by the Court, the revenue could not have initiated proceedings under the 1995 Rules.

20. Relying upon the decision of the Apex Court in the case of **State of U.P. V/s. Vijay Anand Maharaj** reported in **A.I.R. 1963 SC 946**, Mr.Sridharan submitted that the proceedings under Article 226 is neither a proceeding under the Act nor it is a continuation of the proceedings under the Act and, therefore, interest if any, payable pursuant to the order of the Delhi High Court could not be said to be amount due 'under the Act'. Consequently, to recover the amount which is not due under the Act, recovery proceedings under the 1995 Rules could not be initiated.

21. Mr.Sridharan referred to Rule 21 of the Bombay High Court Appellate Side Rules, 1960 which provides that every order passed on Civil Applications under Article 226 of the Constitution including any order as to costs, shall be drawn up as if it were a decree and shall be executable as a decree in the manner provided in the Code of Civil Procedure. By the

same analogy, interest, if any, payable pursuant to the Delhi High Court's order has to be recovered by initiating proceedings under the Code of Civil Procedure and the revenue could not have resorted to the recovery proceedings under the Act. Accordingly, Mr.Sridharan submitted that in the present case neither the demand for interest nor the procedure adopted for recovery of such interest are authorised by law and, therefore, the demand as well as the action initiated by the revenue are liable to be quashed and set aside.

22. Mr.R.V.Desai, learned senior counsel appearing on behalf of the respondents on the other hand, submitted that section 12 of the Excise Act empowers the Central Government to apply the recovery provisions contained in the Customs Act in respect of the duties imposed under section 3 of the Excise Act. The written arguments submitted by Mr.Desai in this context reads as under:-

> " Notification No.48/97 dated 2/09/1997 issued by the Central Government in exercise of powers conferred by Section 12 of the Central Excise Act, 1944 which in turn includes Section 3 inter alia makes the provisions of Section 142 of the Customs Act, 1962 applicable whereby the Officers are empowered to collect / recover duty etc. "

23. With reference to the demand for interest, Mr.Desai submitted that while disposing of a group of

petitions on 9/7/91 the Delhi High Court had directed that the duty be recovered with interest. Though the said order was not passed in the petition filed by the firm, it is not in dispute that the writ petition filed by the firm was dismissed on 22/1/92 in terms of the earlier order dated 9/7/91. Since the order dated 9/7/91 contained a direction to collect duty with interest, the assessing officer was justified in demanding interest on the delayed payment of duty. Mr.Desai further submitted that the order in original dated 24/12/91 has attained finality long ago and the present Writ Petition filed belatedly in the year 2003 to challenge the said order suffers from gross delay and laches and hence no relief can be granted in favour of the petitioner.

24. As regards the initiation of recovery proceedings under the 1995 Rules, Mr.Desai submitted that once the liability to pay interest is confirmed by an order of adjudication passed under the Excise Act and the said order has attained finality, then the amount of interest payable would be the amount due to the government under the Act and hence recoverable by initiating proceedings under the Act. Accordingly, Mr. Desai submitted that there is no merit in the contentions raised on behalf of the petitioner and the petition is liable to be dismissed with costs.

25. We have carefully considered the oral as well as the written submissions made by the counsel on both sides.

26. The arguments of the petitioner can be considered in four parts (one) whether the Central Government, under section 12 of the Excise Act, is empowered to import the provisions relating to recovery / collection contained in the Customs Act 1962 in respect of the duties imposed under section 3 of the Excise Act ? (two) whether the demand for interest contained in the order in original dated 24/12/1991 is legal, in view of the fact that at the relevant time there was no provision under the Central Excise Act to demand interest on delayed payment of duty ? (three) whether the revenue is justified in demanding interest on the basis of the Delhi High Court order even though there is no specific order of the Court directing the revenue to recover duty with interest ? (four) Assuming that the order of the Delhi High Court permits the revenue to recover duty with interest, whether such interest can be recovered by initiating proceedings under the Act ?

27. First and the foremost argument is that the word ‘levy’ in section 12 of the Excise Act does not

include ‘recovery / collection’ and, therefore, the Central Government cannot invoke the recovery provisions of the Customs Act in respect of the duties imposed under section 3 of the Excise Act. Section 12 of the Excise Act reads thus:-

> "**12. Application of the provisions of Act 8 of 1878 to Central excise duties** - The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the [Customs Act, 1962 (52 of 1962)] relating to levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3. "

28. Under section 12, the Central Government is inter alia empowered to invoke the provisions of the Customs Act relating to levy and other provisions specifically set out therein, in respect of the duties of excise imposed under section 3 of the Excise Act. Section 12 of the Excise Act does not specifically empower the Central Government to import the provisions of the Customs Act relating to recovery of duty, however, it is the contention of the revenue that the word ‘levy’ used in section 12 is a comprehensive term and includes all the stages from charge to collection. The question, therefore, to be considered is whether the word ‘levy’ in section 12 of the Excise Act is used

in a comprehensive sense to include ‘recovery / collection’ or is it used in the restricted sense to mean ‘charge; and not ‘collection’ ? It is well established in law that in fiscal statutes, unless the context otherwise requires, ordinary and natural meaning has to be given to the words used in the statute. Therefore, it is necessary to find out as to what is the ordinary and natural meaning of the word ‘levy’ and whether the context in which the word ‘levy’ is used in section 12 requires a restricted meaning to be given to it ?

29. As per Stroud’s Judicial Dictionary, Fifth Edition, the word "levy" means :-

"1) To collect, or exact, as to levy money;

2) To ‘levy’ when applied to money means "to collect or get in".

3) To ‘levy’ a rate, in a mandamus to overseers and other officers, "merely means to take all the necessary steps to enforce payment. "

30. As per Black’s Law Dictionary Fifth Edition, the word "levy" means:-

> "To assess; raise; execute; exact; tax; collect; gather; take up; seize. Thus, to levy (assess, exact, raise, or collect) a tax; to levy (raise or set up) a nuisance; to levy (acknowledge) a fine; to levy (inaugurate) war; to levy an execution i.e. to levy or collect a sum of money on an execution, i.e. to levy or collect a sum of money on an execution.

A seizure. The obtaining of money by legal process through seizure and sale of property; the raising of the money for which an execution has been issued. "

31. In the Oxford English Dictionary Volume VI 1978 Edition, the word "levy" means :-

The action of levying;

the action of collecting an assessment, duty, tax, etc.;

.....

the action of collecting debts or enforcing the payment of fines.

32. In Websters's Enclyopedic Unabridged Dictionary of the English Language 1989 Edition, the word "levy" means :-

" a raising or collecting, as of money or troops, by authority or force.

one who or that which is raised or collected in this manner, as a body of troops or a tax.

to make a levy of; collect (taxes contribution, etc.)

to impose (a tax). "

33. Kania, J. in **Sir Byramjee Jeejeebhoy V/s. Province of Bombay (A.I.R. 1940 Bom.65)** while construing the Bombay (Amendment) Finance Act, 1939 held that the word "levy" in section 24 of the said Finance Act must be construed as meaning "take recovery steps to collect".

34. Chagla, C.J. while construing the provisions of the Sales Tax Law observed in the case of **Dialdas Parmanand V/s. P.S.Talwalkar & Ors.** reported in **A.I.R. 957 Bombay 71** at para 15 as under:-

> " Therefore, "levy" in our opinion in this context must mean any step taken or any proceeding initiated for the ultimate purpose of determining the liability of the assessee and finally collecting the tax. In every taxing statute the various processes are the imposition of the tax by the Legislature itself, the determination of the quantum of tax to which the subject is liable for which usually a machinery is set up, and finally a machinery for the summary recovery of the tax. "

35. The Apex Court in the case of **Town Municipal Committee, Amraoti Taluq V/s. Ramchandra Vasudeo Chimote & Anr.** reported in **53 I.T.R.444** (at page 453) has observed thus :-

> "..The last portion of article 277 uses the words "continue to be levied" and "to be applied to the same purposes". By reason of this collocation between the concept of the levy and of application of the proceeds of the tax, the Constitution makers obviously intended the word "levy" to be understood as including the collection of the tax, for it is only when a tax is collected that any question of its application to a particular purpose would arise."

36. The Apex Court construed the word ‘levy’ in section 70 of the I.P.C. in the case of **Mahtab Singh V/s. State of U.P.** reported in **A.I.R. 1979 Supreme Court 1263** at 1264 (para 8) and observed thus:-

" Section 70 says that the State shall levy fine within six years from the date of the sentence. To levy is to realise or to collect. It is clear that what is meant is that within six years the State must commence proceedings for realisation, not complete it. It is beyond the State's power to complete the realisation proceedings, but it is within its power to initiate such proceedings. "

37. While construing the provisions section 3(1) of the Central Excise Act, the Apex Court in the case of **Ujagar Prints, Etc.Etc. V/s. Union of India & Ors.** reported in **1988(3) E.L.T.535 (S.C.)** at para 43 has observed thus :-

" In the first place, even S.3(1) which, according to the counsel, is the charging section, uses the same words "levied and collected". These are the same as the words used in Article 265 of the Constitution, which have been interpreted as comprehending the entire process of taxation commencing from the imposition of the tax by enacting a statute to the actual taking away from the pocket of a citizen. They take in every stage in the entire process of taxation. The words "levied" is a wide and generic expression. One can say with as much appropriateness that the income-tax levies a tax on income as that the Income-tax Officer levies the tax in accordance with the provisions of the Act. It is an expression of wide import and takes in all the stages of charge, quantification and recovery of duty, though in certain contexts it may have a restricted meaning. In the context of sub-section (1) the word "levied" admittedly means "charged" as well as "assessed". The words "levy and collection" in sub-section (3) cannot be construed differently from the words "levied and collected" used in sub-section (1). S.3(3), therefore, also covers the entire gamut of S.3(1) and cannot be construed as becoming operative at a somewhat later stage. Its operation cannot be excluded in determining the

scope of the charge."

38. From the above, it is clear that the ordinary and natural meaning of the word ‘levy’ is to collect. Even judicially the word ‘levy’ has been construed to mean determination of liability as well as collection of tax. Thus, the word levy is a wide and generic expression and unless the context otherwise requires the word ‘levy’ takes in all the three stages of charge, quantification and recovery of duty. The question, therefore, to be considered is, in the context of Section 12, whether the word ‘levy’ is to be given its ordinary and natural meaning or a restricted meaning as contended by the petitioner.

39. The Apex Court in the case of the **New Central Jute Mills Co.Ltd. V/s. The Asstt. Collector of Central Excise (A.I.R. 1971 S.C. 454)** (‘N.C.J. Mills case’ for short) had an occasion to consider the scope of section 12 of the Excise Act. The issue before the Apex Court was, whether the Central Government was empowered under section 12 of the Excise Act to import the provisions relating to ‘power to search premises’ contained in section 105 of the Customs Act, 1962. While upholding the action of the Central Government, the Apex Court (at page 457) observed as follows :-

> " Section 12 of the Act did not bodily lift, as it were, certain provisions of the Sea Customs Act, 1878 and incorporate them as an integral part of the Act. It only empowered the Central Government to apply the provisions of the Sea Customs Act, 1878 with such modifications and alterations as might be considered necessary and desirable by the Central Government for the purpose of implementation and enforcement of Section 3 of the Act. "

Thus, the Apex Court in the case of NCJ Mills case (supra) has held that section 12 of the Excise Act is enacted for the purpose of implementation and enforcement of the duties imposed under section 3 of the Excise Act.

40. It is no doubt true that the phrase ‘for the purpose of implementation and enforcement of section 3 of the Act’ appearing in the Judgment of the Supreme Court in N.C.J.Mills case cannot be read as a statute and the said phrase cannot be read as a substitute or in lieu or in derogation of the express language employed by the Parliament while enacting section 12. However, it is pertinent to note that the issue before the Apex Court was, whether under section 12 the Central Government was justified in invoking the ‘power to search premises’ contained in section 105 of the Customs Act, 1962. The argument of the assessee therein was that section 12 of the Central Excise & Salt Act, 1944 (as it then stood) refers to Sea Customs

Act 1878 and since the Sea Customs Act is repealed the provisions of the Customs Act, 1962 cannot be applied. While rejecting the above argument and upholding the action of the Central Government in applying the provisions relating to searching premises contained in section 105 of the Customs Act, the Apex Court held Section 12 has been enacted for the purpose of implementation and enforcement of Section 3 of the Excise Act. Thus, in the case of N.C.J.Mills (supra), the Apex Court held that though the power to search premises is not specifically set out in section 12, it could be applied by the Central Government because section 12 is enacted to implement and enforce the duties imposed under section 3 of the Excise Act.

41. It may be noted that section 12 of the Excise Act not only refers to ‘levy’ but also refers to other provisions such as exemptions, drawback, warehousing, offences and penalties, confiscation and the procedure relating to offences and appeals. Thus, various categories set out in section 12 clearly show that the said section is enacted to facilitate implementation and enforcement of the duties imposed under section 3. In other words, as per section 12, the Central Government is empowered to import the provisions of the Customs Act relating to levy and other specific provisions which are all related to the

enforcement of levy. Therefore, in the context of section 12 and the categories specifically set out therein, it is evident that the word ‘levy’ has been used in section 12 to mean charge as well as collection. If the word ‘levy’ in section 12 is construed narrowly to mean ‘charge’ and not ‘collection’, in our opinion, it would run counter to the very purpose for which section 12 is enacted.

42. The fact that the charging section 3 in the Excise Act differentiates between the word ‘levy’ and ‘collection’ would have no bearing for construing the word ‘levy’ in section 12. Though there is a presumption that the legislature uses the same word in different parts of the same statute with the same meaning, the said presumption is a weak presumption and the same can be displaced by the context in which it is used. In other words, when the same word is used in different sections, it may not bear the same meaning at each place having regard to the context of its use [see **Maniklal V/s. G.C.Dey (2004) 12 S.C.C. 448**]. Therefore, in the context of Section 3 which is a charging section, the word ‘levy’ will obviously mean charge and would not include recovery or collection as there is a separate section 11 for recovery of the duty imposed under section 3. However, the same analogy cannot be applied in the context of section 12. As

stated earlier, section 12 is enacted to implement and enforce the duties imposed under section 3 of the Excise Act is evident from the words used in section 12 itself. The very fact that the the power conferred upon the Central Government under section 12 is not restricted to levy but extends to various other specific provisions relating to recovery of duties imposed under section 3 clearly suggests that the word 'levy' in section 12 is not used in a restricted sense but is used in a comprehensive sense or natural sense so as to include charge as well as collection of duty. In our opinion, if the word 'levy' in section 12 is construed in a restricted sense it would defeat the avowed object of the legislature to collect the excise duty imposed under section 3, by importing the recovery provisions contained in the Customs Act. Therefore, in the context of section 12, the word 'levy' must be given its ordinary and natural meaning and not the restricted meaning.

43. Strong reliance was placed by the counsel for the petitioner on the decision of the Apex Court in the case of N.B.Sanjana (supra). In our opinion, the ratio laid down in that case has no application to the facts of the present case. The context in which the word 'levy' is used in Rule 10 of the Central Excise Rules is altogether different. Rule 10 provides for

recovery of duties or charges which are short levied or erroneously refunded by the proper officer, by making a written demand within the time stipulated therein. The argument of the revenue in that case before the Apex Court was that Rule 10 applies to cases where some duty has been paid pursuant to an assessment order and in cases where there is Nil assessment, Rule 10 would not apply. In other words, the submission was that the word 'levy' in Rule 10 means actual collection and in cases of Nil assessment the question of paying duty does not arise and, therefore, in such cases Rule 10 would not apply. In that context, while rejecting the contention of the revenue that the expression 'levy' in Rule 10 means actual collection of some amount, the Apex Court held that under the Excise law the word 'levy' has not been used as meaning actual collection. In other words, the Apex Court held that in the context of Rule 10 which deals with the power of the proper officer to issue show cause notice for recovery of the duty short levied, the word 'levy' would obviously relate to the imposition of duty and would not relate to collection of duty. Thus, the context in which the word 'levy' is used in Rule 10 is totally different from the context in which the word 'levy' is used in section 12. As stated earlier, the word 'levy' in section 12 of the Excise Act has been used in a comprehensive sense and not in a restricted sense.

Therefore, the decision of the Apex Court in the case of N.B.Sanjana (supra) has no relevance in the facts of the present case. Similarly, the decision of the Apex Court in the case of National Tobacco Co. (supra) and Somaiya Organics (supra) are also distinguishable on facts. Accordingly, we hold that the Central Government is empowered under section 12 of the Excise Act to import the provisions of Customs Act relating to recovery of sums due to the Government and hence the Notification No.48/97-CE dated 2/9/97 is intra vires section 12 of the Excise Act.

44. With reference to the second and the third question raised by the petitioner, in our opinion, in the present case, the duty demand confirmed with interest by the order in original dated 24/12/91 based on the decision of the Delhi High Court cannot be faulted. It is true that the order passed by the Delhi High Court in Writ Petition No.2523 of 1990 on 22/1/92 does not specifically give any directions for recovery of duty with interest. However, by the said order, the petition was disposed of by specifically recording that the matter is squarely covered by the decision dated 9/7/91. It is pertinent to note that while admitting the petitions covered under the decision dated 9/7/91 as well as the petition filed by the firm the Delhi High Court had granted stay of recovery of duty and in

spite of that order, the processors had recovered duty from the customers and instead of paying it to the Government, utilised the said amount in their business. In this view of the matter, while dismissing all the group petitions on 9/7/91, the Delhi High Court taking into consideration the then prevailing rate of interest had ordered that the revenue will be entitled to recover duty with 17.5% interest. Since the writ petition filed by the firm was inadvertently left out, the Court dismissed the said petition on 22/1/92 by holding that the matter is squarely covered by the decision dated 9/7/91. The petitioner has not disputed those findings. The petitioner has neither made out a case that the firm had not collected the duty during the pendency of the writ petition before the Delhi High court nor the petitioner has sought any clarification from the Delhi High Court. In these circumstances, demand for duty with interest at 17.5% raised in the order dated 24/12/1991 cannot be faulted. Accordingly, we answer the second and third question raised by the petitioner in favour of the Revenue.

45. The fourth and the last question raised by the petitioner is that interest if any recoverable pursuant to the order of the Delhi High Court cannot be recovered by initiating proceedings under section 142 of the Customs Act. There is no merit in this

contention. Once it is held that the assessment order was passed on 24/12/91 under the Excise Act demanding duty with interest is legal, then the duty so determined is liable to be recovered with interest by enforcing the machinery prescribed under the Act. In other words, even if at the relevant time there was no provision under the Excise Act for recovery of duty with interest, once the Court directs the revenue to recover duty with interest then the assessing officer is bound to pass an order accordingly and recover the same as Government dues recoverable under the Act.

46. Reliance placed on Rule 60 of the Bombay High Court Appellate Side Rules is wholly misplaced. The said Rule has no application to recovery of dues under the fiscal statutes and in any event the said Rule does not debar the revenue from recovering the amount by initiating recovery proceedings under the Act and the Rules made thereunder. Accordingly, we answer the fourth question in favour of the revenue.

47. For all the aforesaid reasons, the petition fails. Rule is discharged. However, in the facts of the present case, there will be no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)